

)	
UNITED STATES)	
)	
v.)	Case No. 05-cr-00053 (RDA)
)	
AHMED OMAR ABU ALI)	
)	

Ahmed Omar Abu Ali, through his undersigned counsel, respectfully files this notice regarding the Fourth Circuit's order on November 21, 2019, denying Abu Ali's Motion for Abeyance and Motion under 28 U.S.C. § 2244 for authorization to file a successive motion under § 2255(h).

2. Because of the statute of limitations bar on claims based on his new evidence, Abu Ali simultaneously filed on October 2, 2019, a Motion under § 2244 for authorization to file a successive motion under § 2255(h), along with a Motion for Abeyance, since the necessity of his successive application would only become clear after resolution of his district court motion.

3. On November 21, 2019, the Fourth Circuit issued an order denying Abu Ali's Motion for Abeyance and Motion under § 2244 without opinion or reasoning. *See* Order of Nov. 21, 2019, No. 19-392 (dkt. no. 11).

4. In petitions under § 2244, there is no question as to *whether* the successive motion for which authorization is sought is successive. A successive motion is *assumed*.

Abu Ali made no argument about whether his proposed motion was successive.

5. The Circuit Court's order thus did not decide the question of whether Abu Ali proposed motion was successive. It only denied his request to file a successive motion, and there is nothing in the court's order to suggest otherwise.

6. Abu Ali's properly-filed original motion under § 2255 remains pending in the district court. On November 7, 2019, the Court ordered the government to respond to the motion within 14 days. The government did not respond by the date ordered. The government should be required to respond as ordered and the motion should be properly decided. In the alternative, to the extent the Court has concerns about the effect of the Circuit's order on its jurisdiction to decide the motion, it should not decide the question without briefing on the question, and the parties should either address the issue in their Response/Reply to Abu Ali's § 2255 motion, or separate briefing or a status hearing should be ordered.

Dated: Alexandria, Virginia
November 22, 2019

Respectfully submitted,

/s/ John Kenneth Zwerling
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*Baher Azmy (motion for admission *pro hac vice* forthcoming)

*Pardiss Kebriaei (motion for admission *pro hac vice* forthcoming)

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